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A Redefinition of “Spitzenkandidaten”

The Next EU Commission Needs a Common Political Mandate

Nicolai von Ondarza

The European Union’s (EU) citizens have voted, and now the EU institutions are due to be reorganised for the next political cycle. Most attention is focussed on personnel issues, but the reorganisation of policy priorities and the structure of the EU Commission are equally important. At the end of Jean-Claude Juncker’s term as President of the European Commission, the results are mixed: The Commission has become more focussed and internally coherent, but even at the end of the legislative period, many of its legislative proposals were not able to obtain a majority in the European Parliament and/or the Council of the EU. The mission statement of the political Commission has increasingly proven to be incompatible with the control tasks of the EU’s highest executive body. The new Commission will operate in an even more difficult political environment and will itself become more party-politically heterogeneous. Its realignment should therefore also be used as an opportunity to interpret the “Spitzenkandidaten” principle differently and negotiate a joint political programme for the EU between the Parliament, the Council, and the new Commission.

At the beginning of each legislative period of the European Parliament (EP), the EU institutions are reorganised for the new institutional cycle. The election of the President of the European Commission is closely linked to the nomination of the High Representative, the President of the European Council, the President of the European Parliament, and the other members of the Commission. In 2019, the succession of the President of the European Central Bank, Mario Draghi, will also be decided upon. Although originally intended to be separated from the party-political negotiations, this nomination will inevitably be included in the power poker between the member states.

This complex process is accompanied by rivalries at three levels: between the parties in the EP, which are competing to organise a majority after the elections; between the EP and the national governments in the European Council on the question of who selects the President of the Commission; and lastly between the member states, which are interested in using their influence to the fullest possible extent.

The Presidency of the European Commission still holds the key position in this institutional – and programmatic – repositioning, although the Commission has lost importance in the EU’s political system over the last decade. Indeed, the European Coun-



cil is the forum in which the major compromises between the member states are negotiated, and the Parliament has gained more influence in shaping EU legislation. Yet, the sole legislative right of initiative remains with the EU Commission, which represents the EU in important negotiations (such as in regards to Brexit with the United Kingdom), and it acts as “guardian of the treaties” in the implementation of EU legislation and the protection of the rule of law.

Mixed Assessment of the “Last Chance Commission”

The realignment of the European Commission is therefore an important building block for the political orientation of the EU. Therefore, it is worth reviewing the last Commission. When the Juncker Commission was elected in 2014, the EU – and especially the eurozone – was in the midst of the most severe financial and economic crisis of the post-war period. Juncker started out with the claim that the team he led had to regain the trust of the citizens and called it the “Last Chance Commission”. But the Juncker Commission’s term in office was marked by further crises – the Grexit debate, the refugee crisis, the Brexit vote, and the trade conflict with the United States are only the most visible landmarks of a persistently challenging era.

At least the economic situation in the Union has stabilised during the Juncker Commission’s term of office. Confidence in the EU has also grown again, notably after the Brexit vote. In March 2019, 62 per cent of respondents gave a positive assessment of the EU, compared with 50 per cent in 2014. The same applies to the EU Commission as an institution. In 2018, more people in the EU (46 per cent) trusted the Commission than in 2014 (32 per cent).

Simultaneously, however, the crisis in the European Union has developed from being primarily an economic one to a political one. EU-sceptical parties have gained support in almost all national elections in EU member states between 2014 and 2019.

In several states, they have also succeeded in assuming government responsibility, for example in Italy and (temporarily) Austria. A major breakthrough did not materialise in the 2019 European elections, but in four of the six largest EU states (France, the United Kingdom, Italy, Poland), EU-sceptical parties became the strongest force. In the EP they are divided (so far) into three factions and far from forming their own majority, at least for the time being. But together they now make up more than 20 per cent of the Members of European Parliament (MEPs). In contrast, the informal grand coalition of the European People’s Party (EPP) and the Socialists and Democrats (S&D) has lost its majority.

The Limits of the Political Commission

The next Commission must now seek a new political foundation in the EP. Under Juncker’s leadership, it had seen itself as a “highly political” Commission that would not only administer EU policy, but also shape it actively along clear – and even controversial – political lines. Juncker wanted to set himself apart from his predecessor, José Manuel Barroso, whose Commission leadership was regarded as technocratic and subordinate to the member states in the European Council.

In practice, the claim of a political Commission was based on two pillars: The first was the political legitimacy of Commission President Juncker himself. In 2014, the holder of this office was elected for the first time by the European Parliament, following the proposal of the heads of state and government in the European Council. In accordance with the “Spitzenkandidaten” principle (top/lead candidates principle), Juncker was able to assert himself as an official candidate for the EPP. From then on, the President of the Commission referred to the dual legitimacy of the national governments and the EP. In practice, however, the authority that could have been derived from this legitimacy was limited. In the European Council, the governments of the large mem-

ber states continue to set the tone. The President of the Commission has only limited influence on its seminal decisions. In the EP, although there was a very close exchange between the leadership of the two major parties and the Commission at the beginning of the parliamentary term, a co-operation comparable to one between a national government and its parliamentary base with a coordinated programme did not emerge.

The second pillar that the “political” Commission was based on was the claim to set its own priorities and to take decisions according to political – not purely technocratic – criteria. It is in this area that the contradictions of the European Commission have become most apparent. The self-image of acting as a political body is difficult to reconcile with the provisions of the EU Treaty, according to which the Commission is to act not only as the engine of integration, but also as the guardian of the treaties. In some policy areas – such as competition policy, the protection of the rule of law, budgetary control in the euro area, and infringement proceedings – it should act as a neutral arbitrator and decide on the basis of technocratic rather than political criteria. Even if the relevant departments of the Commission are internally protected from political influence, its credibility as a neutral body is diminished if the Commission’s leadership sees itself as a political actor.

Two examples from the previous legislative period make this contradiction particularly clear. Over the past five years, the protection of the rule of law within the Union has become one of the Commission’s most important and controversial tasks. Whereas the EPP-led Commission relatively quickly instituted rule of law proceedings against Poland, it was much more hesitant towards Hungary – whose governing party, Fidesz, (still) belongs to the EPP. Both the Polish and Hungarian governments have accused the responsible EU Commissioner – Frans Timmermans, a leading head of the Party of European Socialists (PES) – of being politically motivated. Irrespective

of how individual rule of law procedures are assessed, the modalities that accompanied them have shown that the Commission cannot credibly act as a neutral authority here.

A similar problem can be seen in the control of national economic and budgetary policies, in particular those of the euro states. In the wake of the European debt crisis, the competences of the European Commission in monitoring the budgets of the member states have been extended even further. Here, too, the EU Commission should decide on the basis of technical criteria. The different ways of dealing with the respective budget deficits of France (led by President Emmanuel Macron) and Italy (governed by a coalition of the EU-sceptical Five Star Movement and Lega) have made it clear that political considerations also flow into the assessment of member states’ budgets.

More Cohesion, Clearer Priorities

The Juncker Commission was more successful in rationalising European legislation. Juncker wanted to significantly reduce the number of new legislative initiatives with the aim of leading an EU that concentrates on the essentials and sets clear priorities, adopting the unofficial motto of being “big on big things, small on small things”.

To this end, Juncker has fundamentally transformed the way the Commission works. The President is free to determine the internal organisation and composition of the Commission. At the beginning of the parliamentary term, Juncker introduced a hierarchy within the Commission and formed clusters. With 28 commissioners, the College of the EU Commission is larger than most national governments’ cabinets. However, a reduction in the size of the Commission has so far repeatedly been blocked, especially by the smaller EU states; it would be legally possible without a treaty amendment, but it would require the approval of all member states. Instead, to improve the functioning of the Commission, Juncker has equipped the Vice-Presi-

dents with their own leadership competencies within the Commission and arranged them into seven clusters. For example, the High Representative and Vice-President of the Commission, Federica Mogherini, coordinates the foreign- and security policy – related work of the Commission members responsible for the European Neighbourhood Policy and Enlargement, Trade Policy, Development Policy, and Humanitarian Aid. As a result, the coherence of the EU's foreign policy between the Common Foreign and Security Policy and the areas managed by the Commission has increased significantly.

Secondly, the Commission has identified 10 political priorities for its activities under Juncker. Only those initiatives were put on the Commission's agenda that fell within one of the 10 priorities and were previously recommended by the responsible Vice-President, turning them into gatekeepers on the Commission's blossoming legislative proposals.

In practice, the Juncker Commission has largely achieved its objective of economising and prioritising the Commission's activities. First of all, it has significantly reduced the number of legislative proposals. Whereas the EU adopted, according to EUR-Lex, well over 250 legislative acts (directives and regulations) per year on average before 2009, the average number during the Juncker Commission's term of office was 130 per year. The reduction was so drastic that, at the beginning of the legislative period, some MEPs complained about a lack of legislative initiatives on the part of the EU Commission. As of June 2019, a total of 517 EU directives and regulations were adopted by the Council and the EP during the five years of the Juncker Commission. In comparison, during the second term of Juncker's predecessor, Barroso (2010 – 2014), the figure was 716, almost 40 per cent higher.

Although the announced reduction in legislative output has certainly taken place, the balance is more mixed with regard to its policy aims achieved. The adoption of European directives and regulations is the sole

responsibility of the Parliament and the Council. It is true that the Commission, according to its own figures, has actually presented 94 per cent of the initiatives that it has envisaged within its 10 priorities. However, only two-thirds of the dossiers were approved by EU legislators.

No Strong Agenda-setter

The discrepancy is particularly marked in the legislative projects to which the Commission has assigned a high political priority. Traditionally, the Commission's monopoly of initiative is also intended to act as a "engine of integration" and to advance the Union on fundamental issues such as the development of the internal market and the introduction of the euro. In the complex institutional structure of the Union, the Commission can – and could – never dictate EU policy alone, but is dependent on winning the support of the majority of the EP and, above all, of the member states in the Council for its political projects by proposing clever and workable compromises.

A successful example of this is the handling of the Brexit process by the Juncker Commission. With the early nomination of Michel Barnier as negotiator in the Article 50 process, the EU Commission has not only taken over the direct talks with the United Kingdom. Above all, Barnier and his working group have recorded and processed the political interests of the member states with regard to Brexit through numerous visits to all 27 capitals and regular exchanges in the EU bodies, thus making a decisive contribution towards the EU-27 adopting a uniform position in this process. Although the negotiating mandate has been set by the heads of state and government in the European Council, the Commission has provided substantial input and conducted the negotiations. This political leadership has also given the EU Commission the full confidence of the national governments in the Brexit negotiations.

The situation is different with the EU Commission's major political initiatives. In

his annual “State of the Union” speeches to the European Parliament, Juncker focussed mostly on three of his ten priorities: Point one was “jobs, growth and investment”. Juncker was able to win the support of the Parliament and the Council for the European Fund for Strategic Investments early on, which to date has mobilised 73 billion euros in funding for investments, with a volume of almost 400 billion euros in the EU. In the field of trade policy, the Juncker Commission has also negotiated extensive new free trade agreements for the EU, inter alia with Canada and Japan.

However, in the second project — the further development of the euro area — the Commission has widely missed its targets. At the end of 2017, the Commission presented its “Roadmap for the deepening of Europe’s economic and monetary union”. Key proposals included the establishment of a European Monetary Fund; the transfer of the Fiscal Compact into EU law, which, under international law, is not part of the EU Treaty; a special budget for the euro area within the EU budget; and the appointment of a European Minister for Economic Affairs and Finance. These proposals have been met with direct, massive rejection in several eurozone states. At the end of its term of office, the Juncker Commission has not yet achieved any of these goals. Negotiations on a — much more limited — “Budgetary Instrument for Convergence and Competitiveness” in the eurozone have progressed the furthest. This, however, is mainly due to the impetus given by Germany and France in this matter.

The third area to which Juncker gave priority was the asylum and migration policy. In the course of the last legislative period, this issue was elevated to the Commission’s most important issue. As early as 2016, the Commission presented two major legislative packages to reform the Common European Asylum System. Despite intensive negotiations, however, it has not succeeded in obtaining the approval of the Council, in particular for its flagship projects in this policy area, such as the reform of the Dublin regime.

The lack of progress in all of these highly political areas can, of course, be attributed only partly to the Commission. In its “Strategic Agenda” for 2014 to 2019, the European Council has also declared as priorities the issues of competitiveness and reform of the Economic and Monetary Union (EMU) as well as EU asylum and migration policy. The reasons for the lack of agreement are to a large extent beyond the control of the Commission and found in the increasing tensions between the member states. Even in a series of summit meetings, the heads of state and government were only able to make modest progress on asylum and migration policy and eurozone reform.

Nevertheless, the shortcomings of the Commission have become apparent in these highly political issues. Firstly, it lacks its own political power base. In parliamentary systems, national governments can rely on their government factions or coalitions as a foundation for power. Despite the “Spitzenkandidaten” principle, however, the Juncker Commission could not rely on continual support from the European Parliament. There was no coalition agreement with thematic objectives. At the same time, however, the Commission’s rapprochement with the EP has fuelled the member states’ concerns that they might lose control of this important EU institution — a development that has also damaged the confidence of national governments in the Commission.

Moreover, the Commission has been unable to become an honest broker between the member states in the Council and between the Council and the Parliament in highly controversial areas. The right of initiative gives the Commission the opportunity to predetermine the debate at an early stage in the EU’s legislative processes. Ideally, this right could be used to shape EU integration through the careful exploration of preferences and subsequently tailored compromise proposals. The Commission has succeeded in this with the Brexit process. On migration policy and EMU reform, on the other hand, it first raised high expectations and then put forward ideas that were far from capable of generating a consensus.

The Difficult Political Environment of the Next Commission

For the next EU Commission, the political environment will not become simpler. Firstly, there is the election of the President of the Commission. According to the EU Treaty, it is the European Parliament that elects a person for this office, but at the proposal of the heads of state and government in the European Council. In 2014, the EP prevailed with its view that the European Council should only nominate the top candidate whose party won the European elections — after which Jean-Claude Juncker was elected President of the Commission. This procedure gave him additional democratic legitimacy. On the part of the national governments, however, it also cost him confidence. In the run-up to the 2019 European elections, the heads of state and government therefore stressed that there was “no automatism” and that they would not necessarily propose the lead candidate of the largest group after the elections. Shortly after the elections, the majority — but not all — of the political groups in the EP confirmed that they would only accept a top candidate as a nomination. At the same time, the three main political groups — the EPP, the S&D, and the newly formed Renew Europe (previous ALDE) — have so far not agreed on a common candidate. The heads of state and government in the European Council, on the other hand, have instructed Council President Donald Tusk to explore which personality could achieve a majority in both institutions: the European Council and the EP. While negotiations are going on, some national leaders, such as French President Macron, have already declared all three major “Spitzenkandidaten” as being out of the running. Thus, right at the beginning of the new Commission’s term of office, there is the threat of both institutional and party political power struggles, which could damage the authority of the new Commission even before it has been elected.

Secondly, the political composition of the College of Commissioners itself will be more heterogeneous. The principle remains

that each EU country may nominate one Commissioner. Consequently, the party-political composition of the Commission will not reflect that of the European Parliament, but that of the parliamentary majorities on which the national governments in the EU rely at the time the Commission is appointed. This tableau is much more heterogeneous in 2019 than it was in 2014: In the Juncker Commission, 27 out of 28 members came from the three large party families — the EPP (Commission President, 13 other Commissioners), the European Social Democrats (8 Commissioners), and ALDE (5 Commissioners). Meanwhile, the EPP and the PES have lost influence, while parties outside the European mainstream have come into government responsibility. If all national governments follow the logic of nominating a candidate for the Commission from the leading governing party, the composition will change as follows: The EPP — depending on the classification of Fidesz — would fall back to 6 or 7 members, the PES would remain at 8, and the Liberals would catch up with 7. In addition, Commissioners from the European Left (1), hitherto independent parties (Lithuania, Austria), but also three from the EU-sceptical governments of Italy, Poland, and Hungary, plus — depending on the course of the Brexit process — a representative of the United Kingdom. The decisions of the College of Commissioners are taken using a simple majority so that individual Commission members can be overruled. Nevertheless, the integration of the Commissioners, especially from the last group, will be one of the main challenges for the next Commission President.

Thirdly, this fragmentation within the Commission only reflects the increasing fragmentation of the political institutions of the EU itself. This fragmentation will make it more difficult for the Commission — but above all for the EU as a whole — to take and enforce policy decisions. The Commission can only propose EU legislation; it must be adopted by the Council and/or the Parliament. Since tensions between national governments in the EU Council have al-

ready increased in recent years, majority voting in the European Parliament will become more complex after the May 2019 elections. The previously dominant parties — the EPP and the S&D — have lost their common absolute majority. Stable majorities now require the cooperation of at least three parliamentary groups. For the election of the President of the Commission, talks on policy and personnel decisions between the EPP, the S&D, Renew Europe, and the European Greens are proving difficult. However, changing majorities are possible for decisions on substantive issues, which the EP can also take with a relative majority. For example, on questions of consumer protection, a majority to the left of the centre with cooperation between the RE, the S&D, the Greens, and the European Left (GUE/NGL) is conceivable; on migration issues, cooperation between the parties to the right of the centre is conceivable. In view of the growth for EU-sceptical parties, which together now hold 186 seats, EP votes will become more controversial — and thus more unpredictable for the Commission and the Council.

Redefine “Spitzenkandidaten”, Obtain a Political Mandate

The start of the European legislative period is an opportunity to reorganise the EU Commission in terms of personnel, politics, and institutions. There are four recommendations for the institutional development of the Commission following the experience of the Juncker era as well as the analysis of the new political situation after the European elections.

Firstly, the Commission’s stronger institutional focus with its cluster structure has proved its worth. In the long term, the EU states should make use of the possibilities offered by the EU Treaty and abandon the principle of “one commissioner per member state”. Until this has been achieved, however, the next Commission should also have a clear hierarchy and be divided into programmatic clusters. This organisational

solution would also increase the coherence of the EU as a whole and make the Union’s legislation more stringent and targeted.

The greater challenge for the Commission will, secondly, be to reconcile its ambition to act as a political institution with its assigned role as a neutral arbitrator. This contradiction will not be completely resolved without a Treaty amendment. A Commission whose President is elected by the European Parliament and which depends on a parliamentary majority, has a monopoly of initiative, and negotiates internationally on behalf of the EU is inevitably a political body that needs a strong political mandate. A return to an authority that takes its decisions solely on the basis of technical criteria is therefore neither desirable nor feasible for the EU. Instead, the next Commission should internally clearly separate those tasks for which it has to act neutrally from the political level or — as far as primary law allows — outsource them to independent bodies. For example, it could delegate more of its powers in supervising the eurozone states to the independent European Stability Mechanism and delegate its powers in controlling the rule of law to an independent EU agency. These bodies could fulfil control obligations more credibly while the Commission focusses on its policy tasks.

Thirdly, for its political role, the Commission needs a stronger mandate and a more stable anchoring in the Council and the Parliament. To this end, the EU should reinterpret the “Spitzenkandidaten” principle. In 2014, the EP prevailed with the view that the candidate of the largest group should become Commission President. However, in the new Parliament — in which the cooperation of at least three groups is required for a majority — no group can claim to have won the European elections on its own. But instead of returning to the old days of backdoor politics, it is necessary and sensible to return to the actual legal core of the principle: for the citizens of the EU to co-determine the President of the Commission with their election decisions, as is customary in a parliamen-

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tary democracy. This means that only a candidate who also took part in the election campaign should be elected to head the Commission. It is now up to the President of the European Council to explore with the parties which of them can organise a majority in the EP. With such a procedure, the EU would take a real step towards parliamentary democracy.

Fourthly, the fragmentation in the EP and the blockade on central substantive issues mean that the EU needs to set cross-institutional priorities. When Juncker was elected President of the Commission, the parties in the EP missed the opportunity to agree on substantive policy priorities. An EU capable of action, however, requires agreement on a programmatic agenda linked to the personnel package. On the one hand, this applies to the EP itself, in which the parties involved in the “coalition talks” could put together a package of accompanying political and substantive negotiations. But it also applies to the relationship between the institutions. The heads of state and government began negotiations on their “Strategic Agenda” for 2019 to 2024 at their informal meeting in Sibiu two weeks before the elections, as though the European elections were irrelevant to the EU’s priorities. They adopted them in June before the decision on the EU Commission President was taken. This strategic debate between the member states is right and necessary. But it should only be a start, followed by negotiations on the EU’s strategic agenda for the next five years with the new European Parliament and the new Commission. A joint programme drawn up in this way – a kind of European coalition agreement – would not only do justice to the complex network of consensus democracy in the European Union, but would also provide the new Commission and the EU institutions as a whole with a resilient political mandate for the further development of the EU.

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